No. 80-858

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, SOL FISHKO, LEO L. VOHSEN, *et al.*,

Petitioners,

v.

GERALD ROBERT COLLIER,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

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REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

I.

FEDERAL ISSUES PROPERLY RAISED

The particular ways and times in which the Federal questions were raised below were detailed in our Petition (at pp. 9-12) and are unaffected by the vague assertion by Respondent Collier that the Federal questions, admittedly raised in the trial court, were not properly raised in the Court below (Opp. 11-12).* Indeed, Collier

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* Consolidated Brief in Opposition to Petitions for Writ of Certiorari to the Supreme Court of Virginia, Nos. 80-858 and 80-859, referred to herein as "Opp." or "Opposition."

admits that the International Petition to the Supreme Court of Virginia referred to the Federal labor laws and decisions, but attempts to derogate those references as "short" and "casual" (Opp. 12), as though some particular length and depth, some specific ritualistic incantation, is required. This Court has clearly refuted any such notion.

> "No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928), quoted with approval, *Street* v. *New York*, 394 U.S. 576, 584 (1969).

See also, e.g., Braniff Airways v. *Nebraska State Board*, 347 U.S. 590, 599 (1954).

II.

GENERAL IMPORTANCE OF QUESTIONS PRESENTED

Every activity attributed to the International Union in the Opposition (pp. 8-9)—writing and speaking about the strike issues; attempting to settle the strike; making statements and editorials in opposition to violence; forwarding a classic definition of "scab"—is undeniably activity protected by the Federal labor laws, and also by the Free Speech and Supremacy Clauses of the United States Constitution.*

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* The Consolidated Brief in Opposition fails to acknowledge the separate and special status of the International Union and its officers, the Petitioners in this case, No. 80-858, under the facts of record and the governing law. Collier's references to the "Union's" (*see, e.g.*, Opp. 8) reflect his felt need to treat the two

It is revealing that Collier relies upon outmoded cases and doctrines (Opp. 16), and does not confront modern pre-emption requirements. *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921), and *Truax* v. *Corrigan*, 257 U.S. 312 (1921), for example, the only cases involving labor unions Collier cites in support of his conspiracy theories (Opp. 16-17), long antedate the enactment of the currently effective Federal labor laws. *See, e.g., United States* v. *Hutcheson*, 312 U.S. 219, 236 (1941) ("The Norris-LaGuardia Act was a disapproval of *Duplex Printing Press* v. *Deering* . . . ."). Further, *Youngdahl* v. *Rainfair*, 355 U.S. 131 (1957) (Opp. 15), itself holds that peaceful labor activities may *not* be enjoined—so also may they not be punished by damage awards. *San Diego Building Unions* v. *Garmon*, 359 U.S. 236, 247 (1959). Certainly the peaceful activities of these Petitioners were wholly separate from any of the alleged acts of violence; *Milk Wagon Drivers* v. *Meadowmoor Dairies*, 312 U.S. 287 (1941) (Opp. 15), is thus quite inapposite.

Likewise, Collier's assertion that "[t]he International's constitution in this case, *by itself*, establishes the agency relationship between petitioners and the violent union members" (Opp. 18-19; emphasis added) not only defies common sense in arbitrarily excluding all other facts of record, but also utterly disregards the pertinent Federal

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separate labor organizations as one and the same, which they plainly are not.

In addition, Collier finds it necessary to emphasize events which occurred long after the alleged assault; for example, that the International paid strike benefits to defendants who were not even indicted until four months after his alleged beating (Opp. 10) and pleaded guilty to misdemeanors in April 1977, over a year after the alleged assault upon him (Tr. 1657). The strike ended some time in April or May, 1977 (Tr. 286). Further, Collier finds it necessary to mischaracterize the record; for example, his Opposition refers to a "riot" (Opp. 5), but the referenced testimony characterized the event as a "rally."

labor law standards. *See, e.g., Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966).

Collier cites *Farmer* v. *Carpenters*, 430 U.S. 290 (1977), as though the case held that there was no risk that State damage actions would fetter the exercise of Federally protected rights (Opp. 14). Instead, the Court found that such a risk did indeed exist, requiring vacation of the State Court judgment; the Court declared that it had "responsibility in a case of this kind to determine the scope of the general rule [of pre-emption] by examining the state interests in regulating the conduct in question and the potential for interference with the federal regulatory scheme" (430 U.S. at 297) and to determine whether State Court jurisdiction may be "permitted where there is a realistic threat of interference with the federal regulatory scheme" (*id.* at 305).

Farmer rejects the pervasive contention of Collier that there is no limitation whatever upon the introduction of evidence of Union activities, however peaceful and protected, in a State Court trial upon a claim sounding in State law (Opp. 15-16). The concept that State law is never restricted if the claim is based upon State law is refuted also by *Linn* v. *Plant Guard Workers*, 383 U.S. 53 (1966), which limited recovery for the State tort of libel to a case in which a showing of actual malice was made. In this case, the trial court held that there was no evidence against the officers of the International to justify any judgment against them in their personal capacities (Tr. 1587-1588); but held the International liable, as though it were capable of acting other than through its officers.

Letter Carriers v. *Austin*, 418 U.S. 264 (1974), is cited to suggest that no pre-emption issue is presented here (Opp. 20-21). But the admission that Collier used "language as evidence" (Opp. 21) raises the issue whether a State Court judgment so prominentaly based

upon a Union's peaceful expression of views, indeed the *identical* views the expression of which was protected in *Austin*, "can be squared with the freedom of speech in labor disputes guaranteed under federal law" (418 U.S. at 266).

Likewise, Collier's only citation of *Mine Workers* v. *Gibbs*, *supra*, is to suggest that its teaching would tend to sustain the judgment below (Opp. 13). Quite to the contrary, *Gibbs* reversed a judgment based upon State law upon the ground that an improper standard had been utilized, reserving the question, unmistakably among those at the core of this case, whether "the conspiracy concept could be and was kept within limits proper to the application of state tort law under the pre-emption doctrine . . . ." (383 U.S. at 735). Finally, *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212 (1979), is cited to imply that it supports the tests for determining vicarious liability mobilized below (Opp. 18), when it expressly overruled reliance upon an international's failure to take certain steps in response to actions of the local as a basis for holding an international union liable (444 U.S. at 217-218), precisely the ground relied upon below and in the Opposition (Opp. 9).

Collier does not and cannot deny that many basic questions in Constitutional and labor law are presented by this case. Rather, his Opposition argues the merits of those questions. The fact remains that they are eminently worthy of adjudication by this Court; and that this case, with its many questionable rulings readily subordinating Federal law and policies to those of the State, is an appropriate vehicle for consideration and decision of those issues of general importance.

CONCLUSION

For the reasons stated above and in the Petition, the Petition for a Writ of Certiorari to the Supreme Court of Virginia in this case should be granted.

Respectfully submitted,

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